No. 11,693

IN THE

United States Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

G. W. HUME COMPANY,
Respondent,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A.F.L., and CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, A.F.L.,
Intervenors.

RESPONDENT'S PETITION FOR A REHEARING.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Table of Authorities Cited

Cases

Statutes

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RESPONDENT'S PETITION FOR A REHEARING.

To the Honorable William Denman, Presiding Judge, and to the Honorable Associate Judges of the United States Court of Appeals for the Ninth Circuit:

G. W. Hume Company, respondent above-named, respectfully petitions this Court for a rehearing and for grounds therefor states as follows:

On February 24, 1950 this Court entered its order herein modifying the order of the National Labor Relations Board of October 31, 1946 and enforcing the order as modified. In its opinion the Court found, *inter alia,* as follows:

> "Subdivision (b) of the order, *supra,* requiring Hume to cease giving effect to the closed-shop contract of March 25, 1946, or to any extension or renewal thereof, presents a more difficult problem. The inauguration of that contract while the representation proceeding was pending did not stand alone. It was part of a general course of conduct on Hume's part tending to lend aid and assistance to the A.F.L. Aside from the numerous discharges of employees at the instigation of that union, the Board found that after March 1, 1946 Hume permitted A.F.L. representatives free access to the cannery for the purposes of collecting dues and soliciting memberships while at the same time denying like privileges to representatives of the C.I.O. Hume does not dispute the finding. In light of this pattern of discriminatory conduct we are unable to say that the Board's order relative to the closed-shop addenda to the existing contract should not at this juncture be enforced."

All of the acts referred to by the Court in the above quotation were (as appears from the record herein), done under and pursuant to the terms of the existing contract and if that contract be considered to be valid after March 1, 1946, such acts were lawful. The Court, however, did not determine whether the continuance of the contract after March 1, 1946 was lawful.

It is correct to state that Hume does not dispute the facts referred to above. However, Hume does claim for all of the reasons stated in its Brief and Supplemental Brief herein that the renewal of that contract and all acts performed thereunder were lawful and valid, including the granting of access to the plant by A.F.L. representatives and the soliciting of membership. Such incidental assistance is a customary part of the normal collective bargaining relationship.

In addition, since the entry of the order by the Board on October 31, 1946 there have been changes in the collective bargaining agreement between the parties as a result of joint action of the National Labor Relations Board, the A.F.L. and respondent, represented by California Processors and Growers, Inc. This situation was referred to in our Supplemental Brief on file herein in the *Flotill* case No. 11,449, on page 8 where we stated:

> "However, in the event that respondent's contentions herein should not be sustaained and an order should be entered, respondent may desire (dependent upon the provisions of any order that may be entered) to urge that the entry of the stipulated order and decree in *N.L.R.B. v. California Processors and Growers, Inc., et al.,* No. 12,344, raises serious problems concerning the obligations of respondent under any order that might be entered in this case."

These intervening circumstances are now relevant.

On November 4, 1949, this Court entered a consent decree in the matter of *National Labor Relations*

Board v. California Processors and Growers, Inc., et al., No. 12,344. The respondent herein is named and referred to in that order as a member of the C.P.& G. and is a respondent in that proceeding. Although the Complaint in that proceeding attacked the validity of the contract between the A.F.L. and the C.P.& G., the stipulated order and decree makes no reference to the contract and no order was made with regard to the contract. It was the intention of the parties in so drafting the settlement stipulation and omitting to mention the contract to eliminate any claim that the contract between the A.F.L. and the C.P.& G. and its members was for any reason invalid.[1]

After the Settlement Stipulation the A.F.L. filed a petition with the National Labor Relations Board under Section 9(e) of the Labor Management Relations Act of 1947 for the purpose of securing authority to negotiate a union shop contract with C.P.& G. An election was conducted by the National Labor Relations Board pursuant to that petition and the ballots were tallied on September 13, 1949. The

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[1]The last paragraph of page 6 of the Settlement Stipulation provides as follows:

"It is the purpose of this agreement to adjust finally and completely, all unfair labor practices with which the respective respondents are charged and which serve as the basis of the complaint herein and it is the understanding of all parties that any further action taken by the General Counsel or the Board upon the basis of said charges and complaint shall be limited by, and taken pursuant to, the terms of this Stipulation. It is further understood that any allegations made in the charges and the complaint herein, not expressly mentioned in this Stipulation or the Order herein, shall be deemed settled or adjusted and shall not serve as the basis for any new or further proceedings before the Board or any Court."

tally showed a vote of 33,237 "Yes" as against 1,578 "No" in favor of authorizing the A.F.L. to enter into an agreement with C.P.& G. (representing its members, including respondent), to require membership in the A.F.L. as a condition of continued employment.

Employees of Hume participated in the election and their ballots were counted, together with those of employees of other members of C.P.& G. voting in the election. On October 17, 1949 the Regional Director for the 20th Region issued his Certificate in said proceeding certifying that the required majority of the employees eligible to vote had voted to authorize the A.F.L. to make an agreement with C.P.& G., Inc. (as representative of its members, including respondent Hume) requiring membership in the A.F.L. as a condition of employment in conformity with the provisions of Section 8(a)(3) of the National Labor Relations Act as amended. Thereafter, the A.F.L. and California Processors and Growers, Inc. acting on behalf of its members, including respondent Hume, entered into a contract pursuant to the authority granted by the certification above referred to which contract is now in existence.

The order of the Board entered in this proceeding on October 31, 1946, and enforced as modified by this Court insofar as it refers to the contract between the A.F.L. and Hume attempts to invalidate not only any then existing contract but any "extension, renewal, modification or supplement thereof or to any

superseding contract." (Record 38.) The contract referred to by the Board in its order has been superseded by a contract unquestionably valid, entered into pursuant to the authorization issued by the N.L.R.B. on October 17, 1949.

It is, therefore, respectfully urged that the order of this Court insofar as it would tend to invalidate any existing contract between respondent Hume and the A.F.L. be modified.[2]

If the decree to be entered herein does refer to the previously existing contract it should plainly indicate that the contract now existing is valid. However, as there is no longer any question as to the validity of the present contract preferably any decree entered herein should not contain language referring to the superseded contract as this might throw doubt on the existing completely valid contract.

Respondent further urges that for all the reasons heretofore argued at length in its Brief and Supplemental Brief on file herein, and on a parity of reasoning with the decision of this Court in *National Labor Relations Board v. Scientific Nutrition, etc.,* No. 11,694, the order entered herein, insofar as it would require reinstatement with back pay, should not be enforced. It is respectfully suggested that the order of the Board should be set aside in its entirety.

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[2]On March 8, 1950 respondent's counsel wired the NLRB in Washington, D.C., pointing out the conflict summarized above and suggesting a joint application to this Court for modification of its order. To date no reply has been received to this wire.

Wherefore, respondent prays that its petition for a rehearing herein be granted and that on said rehearing, the order entered herein be modified as prayed.

Dated, Oakland, California,
March 15, 1950.

J. PAUL ST. SURE,
EDWARD H. MOORE,
Attorneys for Respondent.

Certificate of Counsel.

I hereby certify that I am of counsel for respondent and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Oakland, California,
March 15, 1950.

J. Paul St. Sure,
Of Counsel for Respondent.